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Rolls Building
London
EC4A 1NL

Date: 22 November 2024

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF PURITY LIMITED
AND IN THE MATTER OF SECTION 85 OF THE FINANCE ACT 2022
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BEFORE DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE RAQUEL AGNELLO KC

BETWEEN:

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Petitioner

-and-

PURITY LIMITED

Respondent

Mr Julian Hickey (instructed by Bailoran) for the Respondent
Mr Matthew Parfitt and Mr Ben Elliott (instructed by HMRC) for the Petitioner

Hearing dates: 3 October 2024

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APPROVED JUDGMENT

Introduction

1. On 14 May 2024, I directed a case management hearing to be listed in relation to the petition issued by HMRC against Purity Limited ('the company') pursuant to section 85 of the Finance Act 2022 (FA 22) and the Insolvency Act 1986 (IA 86) seeking the winding up of the company on the grounds of public interest. By application notice dated 12 July 2024, the company sought a stay of these proceedings pending the outcome of the judicial review application which it had issued on 18 June 2024. During this judgment reference to this court will be to the IC Court.

2. On 3 October 2024, I heard the application for a stay and reserved judgment. After hearing from both parties, I did give directions on 3 October 2024 to enable the petition to be listed for trial. Both parties agreed that the trial was unlikely to be listed before autumn 2025 and that the permission application for judicial review was likely to have been determined (including any oral hearing) before that time. All the evidence has been filed and the petition was ready for trial save for a potential disclosure issue which needed to be dealt with. Effectively, the company has obtained a stay by reason of court listing availability. As is set out below, the main grounds for a stay related to the company's submission that a stay was necessary because it could not raise and rely upon public law defences at the section 85 FA 22 trial. This is the judgment of the application for a stay. Since reserving judgment, I have been notified by the parties that the Administrative Court refused permission on paper but that an application has now been made by the company for an oral hearing. For the avoidance of doubt, the actual decision made by the Administrative Court has not affected what I have set out below.

Background

3. I have sought to summarise quite briefly the background and the summary below is not comprehensive or in any way dealing with the merits of the arguments. Until February 2024, the company operated an umbrella business of acting as the employer for individual workers whose work was arranged by employment agencies. Around 90% of the company's employees took advantage of a scheme promoted by the company whereby the employee was paid a salary based on the minimum wage with the balance of the 'salary' being provided by way of an 'advance' to the employee.

The company asserts this advance is a loan and accordingly, no payroll taxes are payable on the bulk of the 'salary'. HMRC asserts that the tax consequences of the arrangement promoted by the company are essentially that payroll taxes remain payable and that there was a failure to comply with the consumer credit regime in making the loans to the employees. HMRC also assert that employees who were sold the scheme were not informed about the obligation to repay out of their income to the company. The company charged what HMRC asserts are substantial fees to the employees signed up to the scheme, approximately 16-20% of the gross contract value. HMRC asserts that the scheme operates at the cost of the general body of taxpayers. The company asserts that HMRC are incorrect about the tax consequences of the company's scheme.

4. On 6 November 2023, HMRC issued a 'stop notice' to the company in respect of its business activities on the assertion that it comprised a tax avoidance scheme. The company has appealed the stop notice to the First-tier Tribunal ('FTT') and HMRC has issued an application to strike out that appeal notice. By reason of the stop notice, the company ceased its business although there are a large number of employees who have signed up to the scheme who currently do not know if the scheme is one where they will have additional significant liabilities. I was informed that there is no date fixed for the hearing of the appeal or the strike out issued in the FTT proceedings, at least not an effective date for the hearing.

5. On 20 March 2024, HMRC issued the winding up petition on the grounds of public interest pursuant to section 85 FA 22. The relevant parts of section 85 FA 22 are as follows:-

*"**Section 85 – Winding-up petitions by an officer of Revenue and Customs***
(1) Subsection (2) applies where it appears to an officer of Revenue and Customs that it is expedient in the public interest, for the purposes of protecting the public revenue, that a relevant body should be wound up.
(2) The officer may present a petition to the court for the winding up of the body.
(3) On such a petition, the court may wind up the body if the court is of the opinion that it is just and equitable that it should be wound up.
(4) In this section—
"court" means—
(a) the court having jurisdiction for the purposes of the Insolvency Act 1986, or

…
"indirect tax" has the same meaning as in Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes);
"relevant body" means a body, including a partnership, that—
(a) carries on a business as a promoter within the meaning of Part 5 of FA 2014 (promoters of tax avoidance schemes) as if, in sections 234 and 235 of that Part, references to—
(i) "tax" included value added tax and other indirect taxes, and
(ii) "tax advantage" included a tax advantage as defined for value added tax in paragraph 6, and for other indirect taxes in paragraph 7, of Schedule 17 to F(No.2)A 2017;
(b) is connected to a body within paragraph (a) (within the meaning of section 1122 of CTA 2010 ("connected" persons))…'

6. On 5 April 2024, HMRC issued determinations to the company for £9,083,443.80 under Regulations 67G and 80 of Income Tax (Pay as You Earn) Regulations 2003 for income tax under PAYE relating to the company's use of a disguised remuneration tax avoidance scheme. Although there are no current proceedings in relation to these determinations, the company has indicated that it may well appeal these determinations to the FTT.

7. On 18 June 2024, the company issued its application in the Administrative Court challenging the decisions made by HMRC to issue and prosecute the petition. The grounds of the judicial review are in summary (as set out in the judicial review application) as follows:-

   'a. Ground 1: Failure by the designated officer to consult C [the company] prior to reaching a decision under s 85 FA 2022 in breach of natural justice.
   b. Ground 2: Error of law in the interpretation and application of s 85(1) FA 2022 as to the meaning of "relevant body" and failure to give adequate reasons, and/or failure to make relevant enquiry into the facts to support HMRC's conclusion.
   c. Ground 3: Failure to meet the requirement that a sole designated officer of HMRC determines whether to exercise the power provided by s.85(1) FA 2022.
   d. Ground 4: The decision to exercise the power under s 85 FA 2022 is unreasonable (taking into account irrelevant considerations and failing to take into account relevant considerations).'

8. I will deal with these in so far as necessary below, but two of those grounds, being grounds 2 and 3 are, in my judgment, legal issues which the IC Court would need to resolve before it could be satisfied that it had the jurisdiction to make the winding up order. They fall into a different category to the other two grounds because they are in my judgment unlikely to be considered as public law defences.

The stay application

9. The parties are agreed that the IC Court has the power and jurisdiction to stay the current proceedings seeking a winding up order pursuant to section 124 IA 86 (and CPR r.3.1.(2)(f) and section 49(3) Supreme Court Act 1981). As set out in the application notice, the company seeks a stay of the petition until after the determination of the judicial review proceedings which it has issued. Mr Hickey's skeleton also seeks a stay of the petition until the determination of any FTT proceedings including any appeals therefrom. The witness statement in support of the stay application of John Bailes, dated 12 July 2024, also seeks a stay until after the determination of any tax proceedings, including any appeals. No application has been made seeking to amend the application notice which was filed on 12 July 2024. HMRC objects to this hearing dealing with any grounds for a stay save for that set out in the application notice. Mr Hickey accepted that there was no application to amend the application notice and he did not make such an application orally before me. Equally there was before me no evidence which set out the grounds of seeking to amend, at this late stage, the stay application. I stated during the hearing that I would deal with the stay application as is set out in the application notice. In any event, as submitted to me by Counsel for HMRC, the fact that there are pending FTT proceedings as at the time of the hearing of the petition is clearly a matter which this court can take into account at the trial of the petition in determining whether it is just and equitable to wind up. I agree.

10. Whilst Mr Hickey set out in his skeleton and before me various grounds in support of his application for a stay, the ground which occupied the most court time was his submission that a stay should be granted because the company was unable to rely on its public law defences to the petition in the IC Court. His alternative submission was that if the company was able to run public law defences, in the exercise of discretion, a stay should be granted because (1) it was just and convenient to do so by reason of there being multiplicity of proceedings, (2) that the judicial review proceedings and its resolution will be of material assistance in resolving the issues arising in the petition proceedings and if successful, will lead to the resolution of the petition proceedings, (3) that there is a genuine underlying dispute in relation to the petition proceedings and in parallel with the procedure in relation to creditors winding up

petitions proceedings, the petition proceedings should be stayed or dismissed pending the resolution of the dispute in other courts or tribunals, (4) that by its nature, section 85 FA 22 requires the IC Court to deal with a dispute that requires tax tribunals expertise and a stay should be granted to enable the proceedings to go before the specialist tax tribunal and (5) there are disputes as to material facts which should be determined by the appropriate tribunal. Some of these submissions relate to the submission that the stay should be granted until resolution of all tax proceedings. I will deal with the above in so far as relevant once I have dealt with the legal issue as to whether the company is able to raise public law defences in section 85 FA 22 proceedings.

A. Can the company raise public law defences in the section 85 FA 22 proceedings

11. The company submits that the significant public law issues raised by the judicial review application should be raised and argued before the Administrative Court and that the Administrative Court is the proper and only forum for dealing with a public law challenge. This effectively is a submission that it is only in the Administrative Court that the public law challenges can be determined. HMRC's position is that this court does have the jurisdiction to hear all the arguments raised by the company, including public law defences. This requires a careful analysis of section 85 FA22 and related provisions, in particular section 124A IA 86.

12. In order for this court to make a winding up order on the grounds of public interest, section 85 FA 22 sets out two necessary requirements, being:
    (1) that the person is a 'relevant body' within the meaning of Part 5 FA 2014 as set out in section 85(4) FA 2022; and
    (2) it appears to HMRC that it is expedient in the public interest for the purposes of protecting the public revenue that the persons should be wound up.

13. There are other necessary jurisdictional requirements such as the jurisdiction of the court for the purposes of the Insolvency Act 1986, but nothing really turns on that issue.

14. Section 85(3) FA 22 states that the court may wind up the relevant body, 'if the court is of the opinion that it is just and equitable that it should be wound up'. It is clear, in

my judgment, that section 85 FA 22 petitions are to be treated in the same way as public interest petitions pursuant to section 124A IA 86. The language and the tests applied are identical in many respects. The just and equitable test uses the same language. The difference between the two types of public interest petitions is that section 124A IA 86 requires the Secretary of State to determine that it is expedient in the public interest that a company should be wound up and section 85FA 22 states that HMRC determines that it is expedient in the public interest for the purposes of protecting the public revenue that the company should be wound up. Although section 85 FA 22 is a new provision, there is of course a wealth of case law, practice and procedure relating to section 124A IA 86 petitions which, in my judgment, are useful in construing section 85 FA 22.

15. Before a section 124A IA 86 petition can be presented by the Secretary of State, in accordance with section 124A IA 86, he/she must consider:-

*'**(a)** any report made or information obtained under Part XIV (except section 448A) of the Companies Act 1985 (company investigations, &c.),*

***(b)** any report made by inspectors under–*

***(i)** section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000, or*

***(ii)** where the company is an open-ended investment company (within the meaning of that Act), regulations made as a result of section 262(2)(k) of that Act;*
***(bb)** any information or documents obtained under section 165, 171, 172, 173 or 175 of that Act,*
***(c)** any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or*
***(d)** any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),…'*

16. Accordingly, the Secretary of State bases his/her decisions on information provided, investigations and in certain cases, a report. Section 85 FA22 requires an officer of HMRC to determine that it is in the public interest that the relevant body should be wound up. Both the determination made by the Secretary of State as well as that made by HMRC are acts which are capable of challenge on public law grounds. The issue is whether such public law challenges can be made by way of defence in the petition proceedings. I was informed by Counsel on behalf of HMRC that their researches did not produce a case where the decision of the Secretary of State to issue

a section 124A IA 86 petition had been challenged either by way of a judicial review or by the raising of public law defences in the IC Court.

17. Reported cases in relation to section 124A IA 86 vary enormously, from those where the company in question is engaged in a business activity which is of a fraudulent nature, to carrying on a regulated business activity without having the appropriate authorisations. The Court of Appeal has held that it is the function of the court in this type of case to weigh all the factors pointing for and against the conclusion that it would be just and equitable to wind up the company (see *Re Walter L Jacob (1989) 5BCC 244*). It is also well established that unacceptable business practices, such as aggressive sales techniques, systematic overcharging, delivery of unsolicited goods can form the basis of an assertion that the business of the company is being conducted in an unreasonable and dishonest way. There is nothing in section 124A IA 86 to suggest that its jurisdiction is limited to cases where the company subject to the petition has acted unlawfully because its business or business methods are illegal. As set out in *Senator Hanseatische Verwaltungsgesellschaft mbH [1997] 1 WLR 515,* the use of the words 'expedient in the public interest' and 'just and equitable' indicated that Parliament has left the Secretary of State to form a view as to what is expedient in the public interest, and the court then decides on the material put before it whether the justice and equity of the case dictate that the company concerned should be wound up.

18. None of the above is controversial in relation to section 124A IA 86 petitions. Mr Hickey did not suggest that in some way the approach to a section 85 FA22 public interest petition should be in some way different from the established case law and approach to section 124A IA 86 petitions. Moreover, Mr Hickey was unable to point to the language used in section 85 FA22 as creating a different approach to section 85 FA 22 petitions as opposed to section 124A IA 86 petitions.

19. Clearly the power given to HMRC in section 85 FA22 is wide. This was recognised at the time and HMRC Counsel referred me to the following reply from the government on the power and in particular question 31:-

'Question 31: do you consider the current safeguards outlined above are sufficient and provide adequate protections for individuals and companies?

5.19 The current established legal safeguards outlined below, which are part of the existing process for winding up a company, ensure that a company is able to explain, clarify and defend itself against the proposed actions by the government:
• _the company has a right to apply for an injunction to stop the petition being advertised by the petitioner before the court hearing takes place
• _the company has the right to make representations during the court hearing which can include filing evidence during the proceedings, and evidence which HMRC need to consider in order to reassess the public interest aspects of the decision to continue with the petition
• _the company has the right to apply to the court to rescind the order or stay the winding up process'

20. In my judgment, none of the above provides any support for there being some restriction as to what a company can seek to argue in its defence to a section 85 FA 22 petition. Such a restriction does not appear from the language of the provision or from the purpose and the approach of the courts in relation to section 124A IA 86 which are clearly applicable here.

21. Both parties referred me to *Beadle v HMRC [2020] EWCA 562*. In that case, the taxpayer was a member of a partnership which had entered into what is called 'DOTAS arrangements 'enabling him to carry back his share of the partnership losses from those arrangements in order to reduce his taxable income for a particular tax year. HMRC issued a partner payment notice ('PPN') under the Finance Act 2014 subsequent to it having issued the partnership with a closure notice which had reduced its losses to nil. HMRC then confirmed the PPN having rejected the taxpayer's representations objecting to it pursuant to paragraph 5 of Schedule 32 to the Finance Act 2014 (FA 14). No judicial review challenge to the PPN was made by the taxpayer.

22. As a result of a failure to pay by the taxpayer, HMRC issued a penalty notice in the sum of 5% pursuant to section 226 of and paragraph 7 of Schedule 32 to the FA 14. The taxpayer appealed against the penalty notice contending that the PPN was a nullity in law and/or that the amount under it should have been zero. He also argued that the invalidity of the PPN constituted 'special circumstances' for reducing the penalty for non-payment and/or a reasonable excuse. The FTT dismissed the appeal on the grounds that it had no jurisdiction on a penalty appeal to consider the validity of the underlying PPN. This decision was upheld by the Upper Tribunal. The appeal therefrom to the Court of Appeal was also dismissed.

23. In the Court of Appeal, at paragraphs 44 and 45 , Lady Justice Simler stated :-

'44.Like the UT, I do not doubt that the exclusivity principle derived in O'Reilly v Mackman [1983] 2 AC 237 is subject to an important limitation which itself has limits as follows. Where a public body brings enforcement action against a person in a court or tribunal (including a court or tribunal whose only jurisdiction is statutory) the promotion of the rule of law and fairness means, in general, that person may defend themselves by challenging the validity of the enforcement decision or some antecedent decision on public law grounds, save where the scope for challenging alleged unlawful conduct has been circumscribed by the relevant statutory scheme, which excludes such a challenge. The question accordingly is whether the statutory scheme in question excludes the ability to raise a public law defence in civil (or criminal) proceedings that are dependent on the validity of an underlying administrative act.

45.Mr Gordon submits that only express statutory language is capable of excluding such a challenge. Like the UT, I disagree. In my judgment the express words used by a statutory scheme looked at in isolation may not be sufficient on their own to restrict or exclude public law challenges, but that may be the clear and necessary implication when the relevant statutory scheme is construed as a whole and in light of its context and purpose. R v Wicks [1998] AC 92 and Quietlynn [1988] QB 114 are cases where in the absence of express statutory language the rights of the defendants in both cases (the first of which self-evidently involved a criminal prosecution) to call into question the legality of administrative acts was limited by necessary implication of the particular statutory schemes. In R v Wicks for example, the House of Lords held that the criminal offence of not taking steps required by an enforcement notice created by section 179 of the Town and Country Planning Act 1990, is embedded in an elaborate statutory code with detailed provisions regarding appeals and as a matter of statutory construction of the words ""enforcement notice"" in section 179(1), all that was necessary accordingly was a notice issued by the authority which was formally valid and had not been set aside. Both cases were referred to by the House of Lords in Boddington as cases where the particular context in which the administrative act triggered consequences for the purposes of the criminal law and/or enforcement

proceedings demonstrated that it was not capable of collateral challenge in criminal or enforcement proceedings.'

24. Her ladyship then considered the issue of statutory construction in this respect at paragraph 47 before determining that the necessary implication of the FA 14 scheme for PPN notices is that the ability to raise a collateral public law challenge to the validity of the underlying PPN is excluded at the penalty and enforcement stage:-

'47. In approaching the question of statutory construction the nature and purpose of the statutory regime and the nature of the rights in issue are the starting point for consideration. There is a strong presumption that Parliament will not legislate to prevent individuals affected by legal measures promulgated by public bodies from having a fair opportunity to challenge such measures and vindicate their rights in court proceedings. Further, whether the impugned administrative act is specifically directed at the respondent to enforcement proceedings, who in consequence has had clear and ample opportunity to challenge the legality of that act before being pursued in enforcement proceedings, or is of a general character directed to the public at large where there has been no obvious or reasonable opportunity to challenge the validity of the underlying administrative act, is an important consideration.

48 Having regard to all of these considerations, it is a clear and necessary implication of the FA 2014 scheme for PPN (and APN) notices, construed as a whole and in light of its statutory purpose, that the ability to raise a collateral public law challenge to the validity of the underlying PPN is excluded at the penalty and enforcement stages. My reasons for that conclusion follow.'

25. Mr Hickey also relied upon the case of *Labeikis v HMRC [2021] EWHC 3237 (QB)*. This was a case heard before Master Dagnall and then appealed to Mr Justice Mould. It involved a challenge by HMRC to declaratory proceedings brought by the relevant taxpayer. It was asserted effectively that instead of the Part 8 proceedings, the taxpayer should have brought judicial review proceedings. It is therefore very different from the matters which I have to determine. Mr Hickey seeks to rely on this case as in some way demonstrating

the exclusive jurisdiction of the tax tribunals to deal with disputes relating to tax. He also relied on Mr Justice Mould holding that the Part 8 proceedings would be struck out, leaving the Administrative Court to determine any judicial review application. That, in my judgment, is very different from what I need to determine here, which is construing section 85 FA 22 so as to determine whether the company can raise and rely on public law defences. In this context the approach in *Beadle* is the one I propose to adopt.

26. I should add that it does not seem to me that a petition issued by HMRC pursuant to section 85 FA 22 would be incapable of dealing with so called tax disputes, being whether the scheme is a tax avoidance scheme. It is clear, in my judgment, that arguments as to whether a company is a relevant body and whether there is a tax avoidance scheme were clearly envisaged by the wording of section 85 FA 22 to be requirements to be established by HMRC on its evidence and therefore capable of being disputed and challenged by a respondent company.

27. The purpose of the statutory scheme created by section 85 FA 22, as well as that created by section 124A IA 86, is to enable these courts to make orders winding up companies on the grounds of public interest. That is an important power given to the respective government bodies to protect the public. If a winding up order is made, it has of course severe consequences on the company itself. The company's business will cease regardless as to whether it is insolvent or not. This, in my judgment, clearly lends itself to the court ensuring that the company is able to defend itself and challenge the grounds put forward by the respective government body in support of its petition. Mr Hickey's submission would mean that in every section 85 FA 22 case, HMRC would be unable to proceed to the hearing of the petition until any judicial review challenge has been dealt with. That makes no sense on the wording used in section 85 FA 22, its width and the determination necessary by the court of the jurisdictional requirements.

28. Moreover, the court hearing the petition will have to make determinations on the evidence before it. Cross examination can be ordered as can disclosure orders be made. This is, in my judgment, one of the fundamental distinctions as between a

creditor's petition for winding up a company and a public interest petition. I deal with that point later in this judgment. For current purposes, this means that the court hearing the petition will deal, in my judgment, with all matters raised by the respondent company in its defence before determining whether to make a winding up order.

29. In my judgment, there is on the wording of section 85 FA2 no express or implied restriction on the ability of the company as a defendant to raise public law defences. HMRC Counsel submitted that a section 85 FA 22 is an enforcement proceeding. Mr Hickey did not make any specific submissions on that point. It seems to me that a section 85 FA 22 petition is not an enforcement proceeding. It differs from criminal cases or penalty notices such as the one before the court in *Beadle*. In my judgment, the characterisation of section 85 FA22 as enforcement proceedings is not essential for reliance to what is set out in *Beadle* and the approach set out by Lady Justice Simler. The purpose of section 85 FA 22 is to wind up companies on the grounds of public interest. The consequences of such an order for a respondent company is the termination of its business and its assets and liabilities being placed in the hands of a liquidator. Other proceedings may follow thereafter as against the directors personally depending on the facts of the case. Prior to the issue of the petition, there has been '*no obvious or reasonable opportunity to challenge the validity of the underlying administrative act'.* In *Beadle*, the Court of Appeal determined after a careful review of the statutory provisions and the underlying regime and purpose, that there was ample opportunity to challenge the PPN before the penalty and enforcement stage. That is not the case in relation to a public interest petition, whichever type has been issued.

30. In section 85 FA 22 proceedings, HMRC may have taken other action before issuing the petition. In this case, HMRC issued a stop notice. However, the breadth of the powers in section 85 FA 22 are such that there is no requirement for HMRC to have taken such steps. The language used is wide enough for HMRC to make its determination and issue the petition and rely on the evidence supporting its determination seeking a winding up order before the court. Equally, the cases relating to section 124A IA 86 petitions demonstrate that there

is no requirement that the alleged conduct relied upon is unlawful or that previous proceedings have established that such conduct is in breach of relevant statutory provisions or regulations.

31. For example, section 124A IA 86 public interest petitions are brought in cases where the Secretary of State relies on the business being conducted being contrary to certain statutory provisions or regulations, such as being an unauthorised collective investment scheme in breach of section 235 of the Financial Services and Markets Act 2000, or as in *Re Senator Hanseatiche*, being an unlawful lottery. The respondent company will be able to defend itself fully by challenging the position taken by the Secretary of State. Equally, in my judgment, a company would also be able to challenge the decision made by HMRC in section 85 FA 22 petitions by raising public law defences. There is no reasonable opportunity in many of these cases to challenge the decision making of the public bodies before the petition is issued. This is the presumption set out by Lady Justice Simler in paragraph 47 of *Beadle* and I can see no restriction which would prevent public law defences being raised and relied upon in section 85 FA 22 proceedings. Accordingly, I adopt the approach set out in *Beadle*. The public law defences are available to the company and I reject the company's submissions in this regard.

B. Should a stay be granted until after the determination of the judicial review proceedings.

32. This is the alternative submission of Mr Hickey. I have set out above his summary of why a stay should be granted. I turn to consider the actual grounds of the judicial review application which are set out above at paragraph 7. As I have already foreshadowed, two of the grounds are what I call legal issues which the IC Court would need to determine before considering whether or not to make a winding up order. They are not, in my judgment, what has been called public law defences. They are effectively jurisdictional requirements, being (1) is the company a relevant body as defined in the section and (2) was the decision made by an officer of HMRC. In my judgment, these issues fall fairly and squarely to be determined by the IC Court. There are really no grounds to support a submission that such grounds should not be

dealt with by the IC Court. They fall fairly and squarely within its jurisdiction and this is what Parliament intended on the language used. They may have been included in a permission application for judicial review, but the IC Court would be required to deal with them before it could consider making a winding up order.

33. It is clear that a court hearing a section 85 FA2 petition would need to be satisfied on that these jurisdictional hurdles have been met. As to the other two grounds, being more classical public law defences, in my judgment there is really no justification to grant a stay. On the exercise of my discretion, I see no basis for a stay based on a multiplicity of proceedings, costs savings or even professed specialist expertise. The IC court deals frequently with jurisdictional requirements and on the basis of what I have set out above, it is also perfectly capable of dealing with public law defences. There is in my judgment no issue of a stay being just and convenient or indeed multiplicity of proceedings. The petition has been listed for a time after the judicial review permission application can be heard including an oral hearing. If, as HMRC Counsel submit, there is no merit in the judicial review, then the petition can be heard at the first available time.

34. I have already listed the petition for trial which allows the judicial review permission application to be dealt with both on paper (already done) and at an oral hearing. That is another reason as to why I reject any further stay being granted. HMRC have already stated that in so far as permission is granted on one or various grounds, then it will consider what case management steps are then appropriate. This will depend on what grounds any permission is granted. It is by no means clear that permission on one ground and not on others will resolve the issues in the petition thereby preventing there being a trial of the petition.

35. There are no costs savings because the petition is effectively ready for hearing. This is not a case where there are steps to be taken in this jurisdiction at the same time as the administrative court. There is a potential disclosure issue, but I have no evidence on that. Neither party has sought for witnesses to attend to be cross examined at the trial of the petition. Mr Hickey's submissions that there is in some way a dispute of material facts is therefore somewhat surprising and not supported by the directions

agreed by both side for the trial of the petition. The trial has been listed before a High Court Judge who is clearly capable of dealing with any disputes and determine the issues. High Court Judges frequently deal with specialist tax issues.

36. I should add that despite Mr Hickey relying on comparisons with creditors petitions presented for the winding up of companies based on insolvency /inability to pay debts as and when they fall due, there are some fundamental differences between the types of petitions. Public interest petitions, either section 124A IA 86 or section 85 FA 22 are ultimately dealt with at trial as I have set out above. Creditors' petitions require the court to be satisfied that there is a debt which is not disputed on substantial grounds (or a cross claim set off or counterclaim which appears to the court to equal or exceed the petition debt). That is a very different test. There is simply no comparison which can be made between the two different types of petitions. Any 'disputes' in a public interest petition will be determined by the court hearing the petition. The Judge will determine by way of example whether the company is a relevant body. A creditor's petition will be dismissed if the court is satisfied that the debt is disputed on grounds which substantial. This is because the winding up jurisdiction relating to creditors petitions is not to be used unless the debt is due and owing, ie it is not disputed on substantial grounds. So I reject Mr Hickey's submissions relating to there being any parallel to drawn or assistance from the approach and practice in creditors petitions.

37. Accordingly I refuse to grant a stay on the alternative grounds relied upon by Mr Hickey.